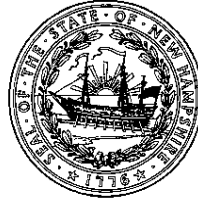


**ATTORNEY GENERAL
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ORVILLE B. "BUD" FITCH II
DEPUTY ATTORNEY GENERAL

November 30, 2006

Honorable William M. Gardner
Secretary of State
Room 204
State House
Concord, New Hampshire

Re: Lobbyist Regulation

Dear Secretary Gardner:

Your Office is charged with administering registration by lobbyists and receiving lobbyists' monthly reports. We provide the following advice regarding the duty of a lobbyist to register and report income and expenses to your office.

1. An employee is asked by an executive branch department to participate as a member of a task force or stakeholder group to aid in the development of new agency rules. Does the employee need to register as a lobbyist?

Short Answer: No, unless that individual is employed for consideration in a representative capacity for the purpose of promoting or opposing, directly or indirectly, any pending or proposed administrative rule. RSA 15:1.

It is our understanding that if a person is employed and some part of his or her duties is to represent the employer's interests before a department of the State by promoting or opposing pending or proposed administrative rules, then that person must register as a lobbyist.

In contrast, if a person is employed and his or her job does not involve representing the employer before the executive or legislative branches of government, but in a limited circumstance his or her expertise in an area related to that employment prompts the employer to request that the employee participate in a task force or stakeholder group creating a proposal for the development of new agency

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rules, then that person would not be a person employed in a representative capacity and therefore would not be required to register as a lobbyist.

2. A business executive, who has among his responsibilities communication and government affairs (including hiring of 3rd party lobbyists and overseeing the outside lobbyists and their lobbying effort), represents the business once or twice a year in meetings with one or more legislators or the Governor at the State House.

Does the business executive need to register as a lobbyist if a lobbyist accompanies him who is registered to lobby for his company and the business executive does not otherwise meet or speak with legislators about pending or proposed legislation without the registered lobbyist being present?

Does the business executive need to register as a lobbyist if he speaks to or meets with a legislator about pending or proposed legislation unaccompanied by a registered lobbyist?

Short Answer: RSA 15:1 does not identify the presence or absence of a registered lobbyist during communications as a factor that should be considered when determining whether another person has a duty to register as a lobbyist.

The law requires anyone who is “employed for a consideration by any other person” where the employment is in a “representative capacity” and the purpose of the representation is “to promote or oppose, directly or indirectly,” executive or legislative branch action to register as a lobbyist. RSA 15:1

3. Does the business executive need to register as a lobbyist if he speaks to or meets with a legislator . . . in response to a request from a legislator to describe the impacts of a proposed bill on the company? Is the answer the same if the business executive gives the explanation without taking a position for or against the proposed legislation?

Short Answer: RSA 15:1 does not identify whether a communication is initiated by the legislator or executive branch official or by the person whose duty to register as a lobbyist is being analyzed, as a factor that should be considered when determining whether the person has a duty to register as a lobbyist. RSA 15:1 looks to the purpose of the employment of the person, not the character of any particular communication between the person and a legislator or executive branch official, to determine if the person must register as a lobbyist.

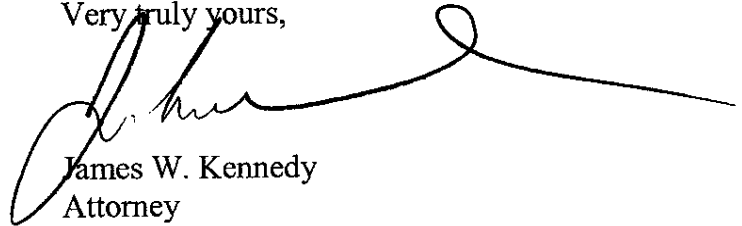
4. Are the answers the same if the individual is an executive director of a nonprofit association with responsibility for all administrative functions, including direction of internal or external lobbyists instead of a business executive?

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Short Answer: RSA 15:1 does not identify the character of the employer as a factor that should be considered when determining whether the person has a duty to register as a lobbyist.

Please feel free to contact me if you have any questions or concerns regarding this advice.

Very truly yours,

A handwritten signature in black ink, appearing to read "James W. Kennedy", with a long horizontal flourish extending to the right.

James W. Kennedy
Attorney

JWK/psm

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